necessary to decide this point. If he did assign, the defendant is not a trespasser, and if he did not assign, he is still the monthly tenant and has allowed the defendant to go into occupation and the defendant would not be a trespasser.

Mr. Joaquim has argued that the defence put forward in Court was not raised in the statement of defence filed. But the plaintiff, before he can succeed, must show that the defendant is a trespasser, which is denied in the statement of defence, and I think that the defendant was entitled to produce evidence to show that he was not a trespasser. I would add that I think it is quite immaterial that in the letter dated the 17th June, 1952, written by Mr. Cumarasami on behalf of the defendant, to Mr. Devaser on behalf of the plaintiff, it is alleged that the defendant was the tenant of the premises. It may be that he was and is, but that is purely a legal question, and whether or not Mr. Cumarasami at the time of writing the letter thought that he was a tenant does not affect the legal position.

I hold that the defendant is not a trespasser and that the plaintiff has failed to establish that he is a trespasser, and I give judgment for the defendant with costs.

Judgment for the defendant.

MOK POH FUN & ORS. v. PUBLIC PROSECUTOR.

[A. Cr. J. (Pretheroe, J.) April 18, 1953]

[Ipoh — Criminal Appeal No. 102 of 1952]

Common Gaming Houses Enactment, s. 4(i)(c) — Assisting in the management of a place used as a common gaming house.

The three appellants were convicted of the offence of assisting in the management of a place used as a common gaming house contrary to section 4(i)(c) of the Common Gaming Houses Enactment. The facts were not in dispute. The Police, on receipt of information, raided a club in Taiping where a considerable number of Chinese were found gambling in the main room of the club. The 3rd appellant admitted that he was the Secretary of the club, the 1st appellant acting as a banker in a gambling game when the police raided the premises. It was argued on behalf of the 1st and 2nd appellants that there was no evidence to show that either of them was assisting in the management of a common gaming house.

Held: although there was evidence to show that the 1st appellant was assisting to conduct a game of chance, there was no evidence to show he was assisting in the management of the premises; (2) on the evidence, the 1st and 2nd appellants could only be convicted of gaming in a common gaming house.

Case referred to:—

(1) *R. v. Lim Soh Chwee & Anor.* B.C.G.H. 2nd ed. 178.

CRIMINAL APPEAL.

Lim Kheng Kooi for the appellants.

M. G. Neal (Federal Counsel) for the Public Prosecutor.

Cur. Adv. Vult.

Pretheroe, J.: — The three appellants were convicted of the offence of assisting in the management of a place used as a common gaming house contrary to section 4(i)(c) of the Common Gaming Houses Enactment. The first two appellants appealed against their convictions and sentences while the third appellant appealed against sentence only.

Most of the facts were not disputed. The Police received certain information regarding the Sin Wei Kuan Recreation Club at Taiping and, as a result, kept it under observation for a period. Then a raid was conducted and a considerable number of Chinese were found gambling in the main room of that Club.

The third appellant admitted that he was the Secretary of the Club. The first appellant stated that he had been the Honorary Auditor of the Club up to the previous July but that he held no office, honorary or otherwise, at the time of the police raid. His name, however, appears in the list of office bearers seized during the raid as a member of the Committee of that Club. The second appellant admitted being a member of the Club but denied that he held any official position and his name does not appear in the list of office bearers of the Club.

At the time of the police raid it seems clear that a gambling game called "Tow-ngow" was in progress and that first appellant was acting as banker. When the police asked for a drawer beside the banker to be opened the key was produced by second appellant but it is not clear whether he produced it from his person or, as he himself asserted, took it off a nail in the wall.

On this evidence Mr. Lim Kheng Kooi, who represented the three appellants, submitted that there was no evidence to show that either first or second appellant "was assisting in the management" of a common gaming house. He was prepared to admit that they were gambling and, in the case of the first appellant, that he was "taking his turn" as the banker, but this was very different from assisting in the management of the premises. In support of this submission he cited *Rex v. Lim Soh Chwee & Anor.*[1]. (This case is not, I think, reported but the judgment appears at

page 178 of Appendix C of Sir Roland Braddell's Common Gaming Houses — 2nd Edition). The judgment in that case was delivered in the year 1911 and has been followed consistently by the Courts ever since. I consider myself bound by that decision and, while agreeing that first appellant was assisting to conduct a game of chance for money, I find that he was not assisting in the management of the premises. The case against the second appellant was even weaker as his explanation of the production of the key, corroborated as it was by the evidence of third appellant, was reasonably probable.

I therefore quash the convictions against the first and second appellants and substitute a conviction under section 6(i) in each case. Each of these appellants is fined $25 and the balance of the fines already paid will be repaid to them.

The third accused was fined $1,500 or, in default of payment, six months rigorous imprisonment. These sentences are exactly one half of the maximum provided by the section. The learned President gave careful thought to the sentences. They are certainly not unconscionable and I see no reason to interfere with the exercise of the Court's discretion. The appeal of the third appellant is dismissed therefore.

Order accordingly.

Re TAN SIM TIANG, DECD. CHINESE BANKERS TRUST CO., LTD. v. WEARNE BROTHERS LTD.

[O. C. J. (Murray-Aynsley, C.J.) May 1, 1953]

[Singapore — Originating Summons No. 83 of 1953]

Conveyancing and Law of Property Ordinance (Cap. 118), s. 35(2) — Sale by legal personal representative after the expiration of 6 years from death of deceased with the sanction of the Court.

The plaintiff, a Trust Company, was the sole administrator of the estate of Tan Sim Tiang, deceased, who died intestate in February 1942. The Trust Company was unable to extract the Letters of Administration until July 10, 1948 when it was already more than 6 years after the death on the intestate. The Trust Company therefore made an application to the Court by way of Originating Summons for sanction of the sale under section 35(2) of the Conveyancing and Law of Property Ordinance by the Trust Company as administrator of the immovable property belonging to the estate of the intestate and for other relief. One of the next of kin entitled in distribution to a share of the intestate's estate was made the defendant in those proceedings. On September 7, 1951 the High Court of Singapore made an Order in such Originating Summons: "That the Applicant be at liberty to sell the immovable property of the intestate specified in the Schedule hereto by public auction out of Court and that in the case of a sale or sales by auction the Particulars and Conditions of such sale or sales and the reserved prices at such sale or sales be approved by the Registrar of this Honourable Court".

Sales by auction took place and the purchaser of one Lot of immovable property at an auction, the defendant in these proceedings, refused to pay purchase money over to the administrator and contended that it should be paid into Court. The administrator contended that as the legal personal representative it had full power to receive and to give good receipts for the purchase moneys of the piece of freehold land in Singapore which the defendant had agreed to buy at the auction.

The questions now put to the Court by this Originating Summons were: "Whether section 35(2) of the Conveyancing and Law of Property Ordinance (Cap. 118) takes away or diminishes or in any way affects the right and/or power of the plaintiff (a Trust Company incorporated in Singapore under the Trust Companies Ordinance (Cap. 154)), the administrator of the estate of the deceased intestate to receive and to give good and valid receipts for purchase moneys payable to the legal personal representative as such on the sale of immovable property belonging to and forming part of the estate of the deceased intestate after the expiration of 6 years from his death; and whether the Order of this Honourable Court made in Originating Summons No. 154 of 1951 on 7th September, 1951, either requires or empowers the defendant to pay the balance of the purchase moneys under the said contract for sale dated 22nd January, 1953, to the plaintiff".

Held: (1) section 35(2) of the Conveyancing and Law of Property Ordinance (Cap. 118) did not take away or diminish or in any way affect the right and or power of the administrator of the estate of the deceased intestate to receive and to give good and valid receipts for purchase moneys payable to the legal personal representative of the deceased intestate as such on the sale of the immovable property belonging to and forming part of the estate of the deceased intestate after the expiration of 6 years from his death; (2) the Order made in Originating Summons No. 154 of 1951 required and empowered the defendant as purchaser of part of the immovable property belonging to the estate of the deceased intestate to pay the balance of the purchase money due under contract for sale to the plaintiff as such legal personal representative.

VENDOR AND PURCHASER SUMMONS.

John Laycock for the plaintiff — a Trust Company, sole administrator of estate of intestate — Section 35(2) of the Conveyancing and Law of Property Ordinance (Cap. 118) is purely a local section. It has no parallel in English law. The whole section forms part of the Colony of the Straits Settlements Ordinance No. 6 of 1886 but sub-section 2 was then different from what it is now. It then read as follows: "Provided that where a sale or mortgage of land belonging to the estate of a deceased person is made after the commencement of this Ordinance by the legal personal representatives or representative of such person after the expiration of a period of six years from his death the purchaser or mortgagee shall be bound to enquire as to the necessity and propriety of such sale or mortgage and shall (notwithstanding any stipulation to the contrary) be entitled to require evidence that such sale or mortgage is necessary and proper."

This sub-section was amended in 1911 by Ordinance No. 17 of 1911. All the Ordinance now